

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NAGHI ESLAMI,

Plaintiff and Appellant,

v.

AMWINS TRANSPORTATION
UNDERWRITERS, INC. et al.,

Defendants and Respondents.

D060579

(Super. Ct. No.
37-2010-00088204-CU-FR-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Judith F.
Hayes, Judge. Affirmed.

I.

INTRODUCTION

Plaintiff and appellant Naghi Eslami, appearing in propria persona, appeals a judgment of dismissal following the trial court's sustaining without leave to amend demurrers to the fourth amended complaint interposed by defendants and respondents

AmWINS Transportation Underwriters, Inc., dba AmWINS Transportation Insurance (AmWINS), and Cordova Insurance Agency, Inc. (Cordova).

Because Eslami has not met his burden as the appellant to demonstrate reversible error, we affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND¹

1. *The pleadings*

Eslami, appearing in propria persona in the trial court, filed this action on March 22, 2010 against defendants AmWINS and Cordova. Both defendants filed demurrers to the complaint. Before the court could hear the demurrers, Eslami filed a first amended complaint.² Both defendants demurred to the first amended complaint, as well. Although the allegations are unclear, the original complaint and first amended

¹ As we describe in further detail in part III, *post*, the pleadings in this case make it difficult for this court to set forth a cogent factual background with respect to the conduct in which Eslami is alleging the defendants engaged. From our review of the record, it appears that the defendants provide insurance brokerage services to transportation companies, and that one or both of the defendants insured Eslami's passenger carrier business, known as Del Mar Shuttle. Eslami appears to contend that one or both of the defendants mishandled an insurance claim that he made, and suggests that one or both of the defendants provided false information to the California Public Utilities Commission concerning his business, by improperly connecting him with another individual named Hossein Pour.

² Eslami failed to designate for the record on appeal any of the documents that the defendants filed with the trial court. Fortunately, the defendants moved in this court to augment the record with relevant documents. This court granted both defendants' motions.

complaint appear to allege claims of fraud against the defendants related to the insuring of Eslami's vehicle, which he used in a transportation business.

The trial court sustained the defendants' demurrers to the first amended complaint on November 19, 2010. In sustaining the demurrers, the court concluded that "[a]lthough plaintiff has pled several specific facts by way of names, dates, and policy numbers, the complaint is void of any cohesive allegations that constitute legal claims." The court granted Eslami 10 days to amend his complaint to cure the defects.

Eslami filed a second amended complaint 10 days later. The defendants filed demurrers to the second amended complaint. The trial court sustained both demurrers on the grounds that the complaint failed to state sufficient facts to constitute any of the claims, and that the complaint was "uncertain." The court again gave Eslami 10 days to amend his complaint, but informed him that the court would not permit him further leave to amend the complaint if the third amended complaint remained defective. The court encouraged Eslami to retain counsel, if possible.

Eslami filed a third amended complaint against both defendants on February 14, 2011. Both defendants demurred to this third amended complaint. After hearing oral argument from all of the parties, the trial court took the matter under submission. After approximately two weeks, the court sustained the defendants' demurrers on the same grounds that it had before. Despite the court's earlier statement that it would not permit further amendment of the complaint, the court once again granted Eslami 10 days' leave to attempt to cure the pleading deficiencies and file another amended complaint. The court warned Eslami that if the fourth amended complaint did not cure the defects raised

by the demurrers, the court would not grant him additional leave to amend, and would dismiss the case. The court again encouraged Eslami to retain counsel, if possible.

Eslami filed a fourth amended complaint (FAC) on June 17, 2011. Both defendants demurred to the FAC on the same grounds on which they had demurred to Eslami's previous pleadings. This time, the trial court sustained both defendants' demurrers without leave to amend, stating:

"The Court finds plaintiff continues to fail to state sufficient facts to constitute a valid cause of action in his fourth amended complaint. In addition, the Court finds the fourth amended complaint is uncertain, unintelligible, and fails to state any legal claims. [¶] As previously admonished, the Court will not entertain further leave to amend. The action is hereby dismissed, with prejudice."

The court entered judgment in favor of the defendants on September 15, 2011. Eslami filed a timely notice of appeal.

III.

DISCUSSION

Eslami's opening brief on appeal is confusing and, for the most part, unintelligible. However, it is clear that Eslami is challenging the trial court's sustaining of the defendants' demurrers without granting him further leave to amend the operative complaint.

" 'A demurrer tests the legal sufficiency of the complaint, and the granting of leave to amend involves the trial court's discretion. Therefore, an appellate court employs two separate standards of review on appeal. [Citations] [¶] The complaint is reviewed de novo to determine whether it contains sufficient facts to state a cause of action.

[Citation.] The properly pleaded material factual allegations, together with facts that may be properly judicially noticed, are accepted as true. Reversible error exists if facts were alleged showing entitlement to relief under any possible legal theory. [Citation.]' " (*Lee v. Los Angeles County Metropolitan Transportation Authority* (2003) 107 Cal.App.4th 848, 853-854 (*Lee*) (italics omitted).)

" 'Where a demurrer is sustained without leave to amend, the reviewing court must determine whether the trial court abused its discretion in doing so. [Citation.] It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment. [Citation.] Regardless of whether a request therefore was made, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion. [Citation.] *The burden is on the plaintiff to demonstrate how he or she can amend the complaint.* . . . Plaintiff can make this showing in the first instance to the appellate court. [Citation.]' [Citation.]" (*Lee, supra*, 107 Cal.App.4th at p. 854 (original italics omitted; new italics added).)

Beyond this, an appellate court presumes that the judgment from which an appeal is taken is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) We adopt all intendments and inferences to affirm the judgment unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.) The appellant has the burden of overcoming the presumption of correctness, even when the appellate court is required to conduct a de novo review. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.) Further, an appellant's election to act as his or her own attorney does not entitle him or

her to any leniency as to the rules of practice and procedure. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Lombardi v. Citizens Nat'l Trust & Sav. Bank* (1955) 137 Cal.App.2d 206, 208-209.)

Eslami purports to assert two causes of action against the defendants: one for what he titles "deceptive concealment amendment of prepaid policies," and one for "fraudulent representation in respond [*sic*] to demand for injuries." At various points in the FAC, it appears that Eslami is basing both causes of action on violations of Business and Professions Code section 17200. However, the pleading, like Eslami's appellate brief, is essentially unintelligible. It consists of rambling statements of dates, names and other "facts," but fails to describe the nature of the events about which he is complaining in a manner that would make them comprehensible. One paragraph of the FAC, presented under the heading for the first cause of action, states:

"On May 9, 2005, and continuing to the most recent date in 2009 or 2010 on which Defendants CORDOVA and AMWINS, or any corporation under its control, in concealment have amended plaintiff's prepaid policies to Hossein Pour and his Company and his address, collects another \$2,454.00 from plaintiff's loan from IBX bring total plaintiff's debt to \$6,178.00 with IBX, but instead added Hossein Pour's other cars, and changed plaintiff's address with IBX and by lying to California PUC (Government) violated Penal Code Section 115 (a) and changed plaintiff's address with PUC and prevent plaintiff to receive any information from IBX or PUC regarding their violations. Defendants AMWINS and CORDOVA committed an unfair business practice and a deceit by suppressing and concealing from the Commissioner of PUC by giving wrong data to PUC and published with Commission records and published into Internet for Public record and check for safety of Limousine Company and their license and insurance certifications[.]"

The following paragraph appears under the heading for the second cause of action:

"Defendant AMWINS while plaintiff had Indemnity Policies with SIC, did not disclose it with CDI investigator, and made NCC to respond and mention that there is only liability policy and there was no claim. Said defendants having successfully given information to the California PUC, for purpose of other facts which were likely to mislead for want of communication to the CDI employee to consider as simple change of date to insurance policies, which is liability only. If CDI investigator was aware of Indemnity policies where not act to close case since for liability policy change of date from July 31, 2006 to August 17, 2006 does not make any differences[.]"

The remainder of the FAC is similarly unintelligible. AmWINS states in its briefing, "Although the FAC is over 18 pages in[]length, Respondent AmWINS still has no idea what it allegedly did wrong." This court, also, is unable to identify what Eslami alleges the defendants did wrong.

Eslami's briefing on appeal does nothing to help shed light on the pleadings, nor does it demonstrate how Eslami might be able to cure the defects in his FAC. Eslami has failed to meet his burden to demonstrate, either in the trial court or on appeal, that the defects in his fourth amended complaint could be cured, despite having been granted several opportunities to file a proper pleading. We conclude that the trial court did not abuse its discretion in sustaining defendants' demurrers without leave to amend.

IV.
DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

BENKE, Acting P. J.

McINTYRE, J.